

REMARKS

Reconsideration of the application is respectfully requested.

Claims 1, 2, 8, 9, 11, 12, 14-16, 22-24, 28 and 31-36 are in the application. Claims 3-7, 10, 13, 17-21, 25-27, and 29-30 are presently withdrawn in view of a previous election. Through this amendment, claims 1 and 15 have been amended, and new claims 35 and 36 have been added.

In the Official Action, the Examiner rejected claims 1, 2, 8, 9, 11, 12, 14-16, 22-24, 28, and 31-34 under 35 U.S.C. §102(b) as being allegedly anticipated by Adams (U.S. Patent No. 2,585,527).

Adams is directed to a slitted resilient closure for containers. (See, Title). As indicated at col. 1, ll. 1-3, the closure is “a closure for containers from which pastes, liquids, powders, and like materials are to be dispensed.” In particular, the closure includes a slit which may be opened or closed to allow for dispensing material. (Col. 2, ll. 6-9). The closure includes a cap 13 formed of a resilient distortable material in which an incision 15 is present which defines the slit. (Col. 2, ll. 32-35). The incision 15 is openable to allow for product flow. (Col. 3, ll. 29-36; Figs. 1 and 7).

First, it is noted that claims 1 and 15 refer to a “syringe”, and claims 33 and 34, which respectively depend from claims 1 and 15, indicate that the “syringe is a medical syringe”. In the

Official Action, the Examiner asserted that since Adams can be used with toothpaste then “Adams discloses a tip cap sealing a medicament within a syringe.” The Examiner’s assertion is respectfully traversed. Regardless if Adams is usable with toothpaste, the container disclosed in Adams is not a syringe. The Adams container is a compactable tube, like a toothpaste tube, which is compacted to urge contents therefrom. One skilled in the art understands a “syringe”, and much more a “medical syringe”, to be a syringe for medical purposes and not a compactable tube as disclosed in Adams. Although claim terminology is to be given its broadest reasonable interpretation during examination, that interpretation must be consistent with the specification and “with the interpretation that those skilled in the art would reach”. (See, MPEP §2111). With reference to paras. [0003] – [0005] of the subject application, a “syringe” is clearly described in the specification as a medical syringe suitable for medical injections. This is also an interpretation that one skilled in the art would reach. In view of this interpretation, no “syringe”, much less a “medical syringe”, is disclosed in Adams.

Moreover, claims 1 and 15, the only pending independent claims in the application, have been amended to indicate that “said tip cap seals the tip of the syringe and contains the medicament within the syringe when said tip is releasably received in said shaft of tip cap and until said tip cap is removed from said syringe.” In contrast, Adams discloses a closure which includes an incision which is opened to allow for dispensing of a product. Accordingly, the Adams’ closure does not rely on removal from the syringe to release its seal; rather, it is intentionally and, by design, openable while being mounted to the container to allow product to flow from the container. Moreover, there is no manner by which the closure can be modified,

Application No.: 10/691,385
Docket No.: 102-539 CIP/RCE II (P-6048/1)
Reply to Final Office Action of January 10, 2008
Page 10 of 10

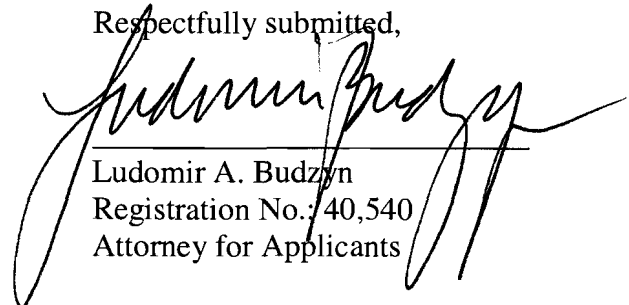
since an opening is absolutely required to permit dispensing from the associated container.

Adams can not be modified to avoid the incision 15. It is respectfully submitted that claims 1, 2, 8, 9, 11, 12, 14-16, 22-24, 28 and 31-34 are patentable over Adams.

New claims 35 and 36 have been added which depend respectively from claims 1 and 15. Both claims 35 and 36 add the limitation of: "said tip cap defines a continuous and uninterrupted sealing surface so as to continuously seal the tip of the syringe when said tip is releasably received in said shaft of said tip cap." The Adams closure does not provide "a continuous and uninterrupted sealing surface". In contrast, Adams provides an openable closure which does not provide a continuous seal. It is respectfully submitted that claims 35 and 36 provide additional bases of patentability.

Favorable action is earnestly solicited. If there are any questions, or if additional information is required, the Examiner is respectfully requested to contact Applicants' attorney at the number listed below.

Respectfully submitted,



Ludomir A. Budzyn
Registration No.: 40,540
Attorney for Applicants

HOFFMANN & BARON, LLP
6900 Jericho Turnpike
Syosset, New York 11791
(973) 331-1700